

State Board of Equalization

OPERATIONS MEMO

For Public Release

No : 1129
Date: April 20, 2005
Revised: May 30, 2008
Revised: April 29, 2010

SUBJECT: Use of Tax Clearance Forms BOE-111/BOE-111-B when “Test Period Not Yet Expired.”

I. GENERAL

The approval of the 2008-09 California Budget included amendments to RTC section 6248 reinstating the “12-month test” for determining whether a vehicle, vessel, or aircraft was purchased for use in California. The provisions of the 12-month test became operative October 1, 2008.

II. BACKGROUND

The approval of the 2004-2005 California Budget included Senate Bill 1100 (SB 1100), (Stats. 2004, Chapter 226), which in part amended RTC section 6248. Effective October 2, 2004, section 6248 replaced the “90-day test” with a “12-month test” to determine if the out-of-state purchase of a vehicle, vessel, or aircraft was a purchase for the purpose of storage, use, or other consumption in California and subject to California use tax. This section was to remain in effect only until July 1, 2006, and as of that date was repealed. However, Assembly Bill 1809 (Chapter 49, Statutes of 2006) extended the previous sunset date of section 6248 from June 30, 2006 to June 30, 2007. On June 30, 2007, the “12-month test” provisions expired due to the sunset date in section 6248 and the “90-day test” became applicable on July 1, 2007. Assembly Bill 1452 (Chapter 763, Statutes of 2008) amended section 6248 to replace the “90-day test” with the “12-month test” operative October 1, 2008. The current statute does not contain a sunset date so without further action by the Legislature, the “12-month test” provisions will apply indefinitely. The following table illustrates the application of each of the two test periods based on the purchase date:

Purchase Date	Test Period
Prior to October 2, 2004	90-Day Test
October 2, 2004 – June 30, 2007	12-Month Test
July 1, 2007 – September 30, 2008	90-Day Test
On or after October 1, 2008	12-Month Test

Subsequently, Assembly Bill 1547 (Chapter 545, Statutes of 2009), effective January 1, 2010, amended the definition of a “California resident” to clarify that a California resident includes a closely held corporation or limited liability company in which 50 percent or more of the shares or membership interests are held by shareholders or members who are California residents.

III. POLICY

A. 90-Day and Six-Month Principal Use Test

For purchases prior to October 2, 2004 and for the period July 1, 2007 through September 30, 2008, any vehicle, vessel, or aircraft purchased outside of California and brought into California within 90 days from the date of its purchase is presumed to be acquired for storage, use, or other consumption in California and subject to use tax. If a vehicle, vessel, or aircraft that is purchased out of state is first functionally used out of state and enters California within 90 days of its purchase date (exclusive of any time of shipment or time of storage for shipment to California), its use may still qualify for exclusion from tax if, during the six months immediately after entry into California, it is used, stored, or both used and stored one-half or more of the time outside of California.

B. 12-Month Test

For the period October 2, 2004 through June 30, 2007, and on or after October 1, 2008,¹ any vehicle, vessel, or aircraft purchased outside of California and brought into California within 12 months from the date of its purchase is presumed to be acquired for storage, use, or other consumption in California and subject to use tax if any of the following occur:

1. The vehicle, vessel, or aircraft was purchased by a California resident as defined in section 516 of the California Vehicle Code (effective January 1, 2010, a California resident is defined to include a closely held corporation or limited liability company if 50 percent or more of the shares of membership interests are held by shareholders or members who are residents of California), **or**
2. In the case of a vehicle, the vehicle was subject to vehicle registration in California during the first 12 months of ownership, **or**
3. In the case of an aircraft or vessel, the aircraft or vessel was subject to property tax in California during the first 12 months of ownership, **or**
4. The vehicle, vessel, or aircraft is used or stored in this state for more than one-half of the time during the first 12 months of ownership.

Under any of the conditions described above, it is presumed that use tax will apply. However, if a purchaser provides satisfactory documentary evidence showing the vehicle, vessel, or aircraft was purchased for use outside of California during the first 12 months of ownership, use tax will not apply. Acceptable evidence may include any of the following:

1. Proof of registration of that vehicle, vessel, or aircraft with a proper out-of-state authority,
2. Proof of payment of tax paid to another state,

¹ The provisions of R&TC section 6248 as amended by SB 1100 do not apply if a vehicle, vessel, or aircraft is purchased—or is the subject of a binding purchase contract that is entered into—on or before October 1, 2004 or during the period of July 1, 2007 through September 30, 2008.

3. Signed and dated copies of military orders,
4. Proof of change in employment status,
5. Apartment lease or rental agreement, or
6. Anything else that will reasonably establish that at the time of purchase the purchaser did not intend to use the vehicle, vessel or aircraft in California.

This documentation must be submitted to the Board of Equalization for evaluation.

C. Test Period Not Yet Expired

Generally, when a taxpayer claims an exclusion under RTC section 6248 (“Not Purchased for Use in California”) and the applicable test period has not yet expired, it is Board policy to permit registration with the California Department of Motor Vehicles (DMV) without the payment of California use tax. Pursuant to that policy, the Board issues form BOE-111, *Certificate of Vehicle, Mobilehome or Commercial Coach Use Tax Clearance*, or form BOE-111-B, *Certificate of Vessel Use Tax Clearance*. Clearances are issued subject to certain documentary requirements, with the understanding that the taxpayer is required to provide additional documentation to the BOE to support his or her exclusion claim at the end of the test period.

As a result of a policy change in June 2004, form BOE-106, “Vehicle/Vessel Use Tax Clearance Request,” form BOE-111, and form BOE-111-B were each revised (any reference hereinafter to “BOE-111” also applies to “BOE-111-B”). The BOE-106 was revised to include a checklist of items required to obtain a “Test Period Not Yet Expired” clearance. The BOE-111 forms were revised to stress that the issuance of the clearance was to allow *registration* at DMV and did not grant an exemption or exclusion or relieve the taxpayer of any tax that may later be found to be due.

IV. **DISTRICT RESPONSIBILITIES**

A. 90-Day and Six-Month Principal Use Test

For vehicles or vessels purchased, or subject to a binding purchase contract entered into prior to October 2, 2004, and purchases or binding purchase contracts entered into during the period of July 1, 2007, through September 30, 2008, the applicable district office procedures for “Test Period Not Yet Expired” BOE-111 requests are addressed in the Compliance Policy and Procedures Manual in sections 820.005, 825.005, 825.020, 825.025, and 825.030. District office staff must require the registrant to provide documentation that shows delivery/possession took place out of state (i.e., copy of purchase agreement, an out-of-state delivery statement, and any additional supporting documentation) and that the vehicle or vessel was first functionally used out of state to proceed with the claim. **(NOTE: A BOE-111/111-B IS NEVER ISSUED FOR A DOCUMENTED VESSEL OR AN AIRCRAFT.)** The BOE-111-A90 (for vehicles) or BOE-111-B90 (for undocumented vessels) should be given to the taxpayer when the test period has not yet expired (i.e., the vehicle/vessel entered California within 90 days of purchase but the taxpayer claims the “Principal Use” test). These letters are available on eBOE and advise taxpayers that they will be required to provide documentation to support their claim for exclusion

at the end of the six month test period. If the applicable test period has expired, it is the responsibility of the district to review the appropriate documentation and make the determination as to the taxability of the transaction before issuing a use tax clearance. If the applicable test period has not yet expired, a copy of the BOE-111 and the entire packet, clearly flagged "Test Period Not Yet Expired" is to be forwarded to the Consumer Use Tax Section (CUTS) with the district contact's name and phone number included. District office staff should continue to follow established procedures with regard to security and retention of forms BOE-106, *Vehicle/Vessels Use Tax Clearance Request*, BOE-111, and supporting documentation.

B. 12-Month Test

For vehicles or vessels purchased during the period October 2, 2004, through June 30, 2007, and on or after October 1, 2008 (except vehicles/vessels purchased subject to a binding purchase contract entered into on or before October 1, 2004 or during the period July 1, 2007 through September 30, 2008), the 12-month test period is in effect. District office responsibilities for issuance of a use tax clearance are generally the same for purchases during this time period, with one major exception: *Do not issue a BOE-111 for a "Test Period Not Yet Expired" request if: (1) the claimant is a California resident, and (2) the vehicle has entered California within the first 12 months of ownership (unless it is a claim for the interstate and foreign commerce exemption, e.g., semi-trailer). If the vehicle or undocumented vessel has been brought into the state, the taxpayer should be advised the transaction is taxable and the use tax should be remitted to the DMV at the time of registration.* Other changes in district office responsibilities are explained below.

District office staff should require the taxpayer to provide the same documentation for a "Test Period Not Yet Expired" claim (i.e., copy of purchase agreement, an out-of-state delivery statement, evidence of first functional use out-of-state and any additional supporting documentation). For claims of "Not Purchased for Use in California" under the 12-month test period, if the taxpayer is a California resident, the BOE-106 should include the taxpayer's statement that the vehicle/undocumented vessel will not enter California during the first 12 months of ownership. If the taxpayer is *not* a California resident, the request should include the reason the vehicle/undocumented vessel is being registered in California (since registration in California presumes the vehicle/undocumented vessel is for use in California and subject to the use tax) and a statement that the vehicle/undocumented vessel will not be used in California more than one-half of the time during the first 12 months of ownership. Exemption claims for vehicles/undocumented vessels "not purchased for use in California" by a taxpayer that is *not* a California resident, even if approved by the district office, should be forwarded to CUTS for referral to the appropriate state in which the vehicle was claimed for use. If the claim is for the interstate and foreign commerce exemption, the vehicle/vessel may enter California within the first 12 months of ownership, and the BOE-111 may be issued using the following procedures.

If the BOE-111 is issued for a "Test Period Not Yet Expired" for a 12-month test period, the district office staff must provide to the taxpayer a BOE-111-AT (vehicle cover letter) or BOE-111-AT-B (undocumented vessel cover letter). These letters are available on eBOE and advise taxpayers that they will be required to provide documentation to support their claim for exclusion at the end of the 12-month test period. A copy of the BOE-111 and the entire packet, clearly flagged "Test Period Not Yet Expired" is to be forwarded to CUTS with the district contact

person's name and phone number included. District office staff should continue to follow established procedures with regard to security and retention of forms BOE-106, BOE-111, and supporting documentation.

V. CONSUMER USE TAX SECTION (CUTS) RESPONSIBILITIES

When a taxpayer requests a "Test Period Not Yet Expired" BOE-111 directly from CUTS, it will be processed by CUTS staff using the same guidelines as in Section IV. The same supporting documentation will be required. (Documentation should be submitted to CUTS.) The appropriate letter will be provided to the taxpayer at the time of issuance (BOE-111-A90, BOE-111-B90, BOE-111-AT or BOE-111-AT-B). An extra copy of the BOE-111 and entire packet will be retained for follow-up in the same manner as those received from the districts.

The CUTS procedures for "Test Period Not Yet Expired" BOE-111 follow-up are addressed in the Compliance Policy and Procedures Manual sections 825.015 and 825.030.

The only significant change in CUTS handling of "Test Period Not Yet Expired" BOE-111 follow-up, will be determining the length of the test period. For each "Test Period Not Yet Expired" BOE-111 packet received in CUTS, a Taxable Activity Registration (TAR) account will be created. CUTS assigns each TAR account a status code that will prompt further action at the end of the 12-month test period or at the end of the 90-day or six-month "Principal Use" test period. If the documentation provided by the taxpayer at the end of the test period supports the claimed exclusion, the taxpayer will be notified that his or her exemption claim has been granted. If the taxpayer fails to provide sufficient documentation, or the documentation indicates the taxpayer has not qualified for exclusion from the use tax, a Notice of Determination will be issued.

VI. PETITIONS SECTION AND AUDIT DETERMINATION AND REFUND SECTION RESPONSIBILITIES

Petitions and refunds will be handled through the normal petition/refund process.

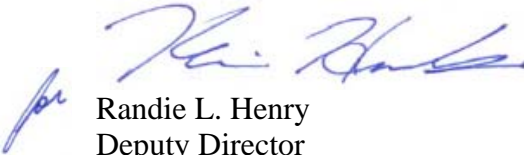
VII. REFERENCE MATERIAL

Additional information regarding the "Not Purchased for Use in California" exclusion for both the 12-month test period and the 90-day or Principal Use requirements of RTC section 6248 may be found on eBOE and the Board's website (www.boe.ca.gov). The September 2004 Tax Information Bulletin (<http://www.boe.ca.gov/news/pdf/Sept04TIB.pdf>), the November 2004 Special Notice (<http://www.boe.ca.gov/news/pdf/L129.pdf>), and the August 2007 Special Notice (<http://www.boe.ca.gov/news/pdf/l-171.pdf>) are available for viewing and/or printing. Particularly helpful are the SUTD Frequently Asked Questions (FAQ's) under the heading Frequently Asked Questions for Sales and Use Tax (<http://www.boe.ca.gov/sutax/faqscont.htm>) which include many details on the exemptions and exclusions for vehicles, vessels, and aircraft.

For questions regarding provisions of RTC section 6248 or policies and procedures covered in this Operations Memo, please call CUTS at 916-445-9524.

VIII. OBSOLESCENCE

This Operations Memo will become obsolete when the information contained herein is incorporated into the Compliance Policy and Procedures Manual, Chapter 8.


for Randie L. Henry
Deputy Director
Sales and Use Tax Department

Distribution: 1-D